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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 United States of America,
10 Plaintiff,
11 v.
12 Katrina Ambrose,
13 Defendant.
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No. CR23-00894-001-TUC-SHR(EJM)
Order Re: Review of Release Order

15 Before the Court is the government's "Motion for Review of Magistrate Judge's
16 Release Order" ("Motion") filed under 18 U.S.C. § 3145(a). Doc. 25. Defendant Katrina
17 Ambrose filed a response in opposition. Doc. 26.

18 On June 13, 2023, Magistrate Judge Bruce G. Macdonald ordered Defendant
19 "released on her own recognizance to a treatment facility." Doc. 19. The Court granted the
20 government's motion to stay the release order and ordered expedited briefing. Docs. 20,
21 24. The government asks this Court to "overturn the Magistrate Judge and order
22 [D]efendant's detention." Doc. 25 at 5. On June 22, 2023, the Court heard oral argument,
23 granted the Government's Motion, and ordered Defendant detained with a written order to
24 follow. This is that order.

25 **I. Background**

26 On May 24, 2023, the government filed a sworn Criminal Complaint charging
27 Defendant with alien smuggling in violation of 8 U.S.C. § 1324. Doc. 1.
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2 The Criminal Complaint alleges:

3 On or about May 23, 2023, in the District of Arizona (North
4 Komelik), a United States Border Patrol Agent (BPA) was
5 conducting immigration inspections at a Border Patrol
6 checkpoint when a 2005 Acura RL approached. The BPA
7 noticed the driver, later identified as Katrina Ambrose, and the
8 front seat passenger, later identified as Ray Ortega, both
9 appeared to be nervous. The BPA asked if they were the only
10 two people in the vehicle and Ambrose hesitantly replied,
11 "yes." The BPA asked if he was allowed to look in the trunk.
12 Ambrose replied, "it is broken and will not open" and
13 continued to say they were late for an appointment and needed
14 to go. The vehicle was referred to the secondary inspection
15 area. The BPA asked again if he could look in the trunk and
16 Ambrose again stated that it was broke[n] and will not open.
17 The BPA advised Ambrose that a canine unit was en route.
18 Ortega blurted out, "just open it." Ambrose pulled the interior
19 trunk release allowing access to the trunk. Oscar Leon-Reyes
20 was discovered inside wearing a sweat soaked shirt while
21 curled up in the fetal position. Leon was determined to be a
22 Mexican citizen illegally present in the United States.

23 Doc. 1.

24 On May 26, 2023, Pretrial Services issued a report recommending Defendant be
25 detained because there is "no condition or combination of conditions that can reasonably
26 assure the appearance of [D]efendant in court or the safety of the community." Doc. 14 at
27 8. Defendant is a United States citizen with verified community ties, she is unemployed
28 and on disability, and has a history of drug and alcohol use. *Id.* at 1–3. The report noted
Defendant's extensive criminal history, including alcohol-related offenses, several charges
relating to alien smuggling, and repeated failures to appear. *Id.* at 3–7. Specifically,
Defendant failed to appear for her arraignment in a 2018 alien smuggling case and a
warrant was executed, and Defendant's supervised release was revoked four times between
September 2019 and September 2020. *Id.* at 6–7. While in custody for the 2019 case,
Defendant admitted to methamphetamine use four days before her arrest on the warrant,

1 and she was found suitable for outpatient services at a substance use treatment facility
2 called the Haven. *Id.* at 7. Defendant was also evaluated by Behavioral Systems Southwest
3 and was found suitable for housing and outpatient services, but Defendant preferred to
4 remain in custody rather than be released to the halfway house, so she remained detained
5 pending sentencing. *Id.* While on supervised release following her sentence for that
6 offense, Defendant failed to attend or reschedule her intake appointment and her supervised
7 release was revoked and a warrant was executed in November 2019. *Id.* In April 2020,
8 Defendant's supervised release began, but was revoked again when she failed to report to
9 her approved residential re-entry center or her probation officer when she was released
10 from custody. *Id.*

11 In August 2021, Defendant was again charged with alien smuggling and sentenced
12 to prison time, followed by supervised release. *Id.* Again, Defendant's supervised release
13 was revoked, and she was sentenced to prison time. *Id.*

14 Based on Defendant's "history of failures to appear resulting in the issuance of a
15 warrant while under the supervision of U.S. Pretrial Services in 2019, her history of
16 noncompliance with supervision including absconding from supervised release, her mental
17 health history, and her substance use history including prior use of alcohol,
18 methamphetamine, and cocaine," Pretrial Services believed Defendant poses a risk of
19 nonappearance. *Id.* at 8. As to danger, Pretrial Services found Defendant poses a risk to the
20 community based on her criminal history, including arrests and convictions for alien
21 smuggling-related offenses, history of noncompliance with supervision, mental health
22 history, and substance use history. *Id.*

23 At Defendant's detention hearing on May 30, 2023, Magistrate Judge Maria S.
24 Aguilera continued the matter and directed Pretrial Services to have Defendant evaluated
25 "for possible residential treatment placement." Doc. 15. On June 8, Pretrial Services filed
26 an addendum to the first report, explaining Defendant had been interviewed by the intake
27 coordinator at the Haven, a residential substance use treatment facility in Tucson, and had
28 been "deemed suitable" for the program. Doc. 17 at 2. The report also said bed space was

1 available for Defendant on June 14. *Id.* Nonetheless, Pretrial Service's initial assessment of
 2 Defendant's risk of nonappearance and risk of danger to the community did not change,
 3 and Pretrial Services again recommended Defendant be detained. *Id.* at 6.

4 At Defendant's June 13, 2023, detention hearing, the government argued for
 5 detention and defense counsel argued for release to a treatment facility. Doc. 19. Judge
 6 Macdonald agreed with defense counsel and ordered "the Defendant released on her own
 7 recognizance to a treatment facility on 6/14/2023 with conditions set forth in the Order
 8 Setting Conditions of Release." *Id.* Judge Macdonald granted the government's oral motion
 9 to stay the release order pending the filing of this appeal. *Id.*

10 **II. Legal Standard**

11 A district court reviews a magistrate judge's detention order de novo. *See United*
 12 *States v. Koenig*, 912 F.2d 1190, 1193 (9th Cir. 1990). The Bail Reform Act mandates
 13 pretrial release unless the Court concludes that "no condition or combination of conditions
 14 will reasonably assure the appearance of the person as required and the safety of any other
 15 person in the community." 18 U.S.C. § 3142(e). The Act imposes a presumption against
 16 pretrial release in certain designated cases where there is probable cause that a defendant
 17 has committed one of the crimes listed in the statute or in the other circumstances set forth
 18 therein. 18 U.S.C. § 3142(e). This presumption shifts the burden of production to the
 19 defendant, but the burden of persuasion remains with the government. *United States v. Hir*,
 20 517 F.3d 1081, 1086 (9th Cir. 2008).

21 As many circuits recognize, the "defendant's burden of production is not heavy,
 22 [but] he must introduce at least some evidence." *U.S. v. Stone*, 608 F.3d 939, 945 (6th Cir.
 23 2010) (internal quotations omitted); *see also U.S. v. Stricklin*, 932 F.2d 1353, 1355 (10th
 24 Cir. 1991) (same "some evidence" standard); *U.S. v. Rodriguez*, 950 F.2d 85, 88 (2d Cir.
 25 1991) (same); *U.S. v. Dominguez*, 783 F.2d 702, 707 (7th Cir. 1986) (same). That is, the
 26 defendant must offer at least some evidence "or basis to conclude that the case falls 'outside
 27 the congressional paradigm' giving rise to the presumption." *U.S. v. Taylor*, 289 F. Supp.
 28 3d 55, 63 (D.D.C. 2018) (quoting *Stone*, 608 F.3d at 945–46). Even when rebutted, the

1 presumption against release remains and is to be considered alongside all other relevant
2 factors. *Hir*, 517 F.3d at 1086.

3 If a defendant succeeds in rebutting a presumption of flight risk or dangerousness,
4 or if no such presumption against release applies, the Court then considers four factors in
5 determining whether to detain or release the defendant:

- 6 (1) the nature and circumstances of the offense charged . . . ;
- 7 (2) the weight of the evidence against the person;
- 8 (3) the history and characteristics of the person, including—
9 (A) the person's character, physical and mental
10 condition, family ties, employment, financial resources,
11 length of residence in the community, community ties,
12 past conduct, history relating to drug or alcohol abuse,
13 criminal history, and record concerning appearance at
14 court proceedings; and
15 (B) whether, at the time of the current offense or arrest,
16 the person was on probation, on parole, or on other
17 release pending trial, sentencing, appeal, or completion
18 of sentence for an offense under Federal, State, or local
19 law; and
- 20 (4) the nature and seriousness of the danger to any person or
21 the community that would be posed by the person's
22 release

23 *Id.*; 18 U.S.C. § 3142(g)(1)–(4). The government must show the defendant poses a flight
24 risk by a preponderance of the evidence. *United States v. Gebro*, 948 F.2d 1118, 1121 (9th
25 Cir. 1991). The government must show the defendant poses a danger to the community by
26 clear and convincing evidence. *United States v. Motamedi*, 767 F.2d 1403, 1406 (9th Cir.
27 1985). Any doubts about the propriety of release should be resolved in the defendant's
28 favor. *Id.* at 1405.

24 **III. Analysis**

25 The parties do not argue any presumption of flight risk or dangerousness applies
26 here, and they appear to agree the issue is whether the government has shown Defendant
27 poses a flight risk by a preponderance of the evidence. Doc. 25 at 3, 5; Doc. 26 at 4, 10.
28 The parties did not change their positions at oral argument.

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1 **A. Bail Reform Act Factors**

2 **1. Nature and Circumstances of the Offense**

3 The government notes Defendant is faced with a charge that carries a maximum
 4 penalty of 10 years imprisonment, if convicted. Doc. 25 at 4. Defendant concedes she faces
 5 up to ten years in prison if convicted but contends that although such a potential sentence
 6 might incentivize other defendants to flee, her history and characteristics "make the risk of
 7 flight diminishingly small." Doc. 26 at 7. Therefore, Defendant argues, this factor does not
 8 weigh in favor of detention. *Id.* Defendant's characteristics and history, however, are
 9 considered in the third factor; accordingly, the Court considers only the nature and
 10 circumstances of the alien smuggling charged here and finds the nature and circumstances
 11 of the offense weighs against release.

12 Defendant is charged with a felony and the facts would arguably allow the
 13 Government to seek an enhancement for intentionally creating a substantial risk of serious
 14 bodily injury to the person in the trunk of the car Defendant was driving. U.S. SENT'G
 15 GUIDELINES MANUAL § 2L1.1(b)(6) (U.S. SENT'G COMM'N 2021). Were this enhancement
 16 to apply the total offense level would be 18. *Id.* Assuming a criminal history category III
 17 (the Defendant's criminal history category in 21-CR-02362-JAS), the Court estimates that
 18 the guideline range were Defendant to be convicted at trial would be 33 to 41 months. The
 19 charge here is serious and the possible prison sentence creates an incentive to flee. This
 20 factor weighs against release.

21 **2. Weight of Evidence**

22 The weight of evidence is the least important factor to consider. The Government
 23 argues the evidence against Defendant is strong. *Id.* at 4. Defendant allegedly drove a car
 24 into a Border Patrol checkpoint; made claims her trunk would not open; and then opened
 25 the trunk to reveal an illegal alien inside when she was referred to secondary inspection
 26 and told a canine unit was on the way. When defense counsel was given the opportunity to
 27 rebut these facts he did not do so. Rather, he said the facts were not unusual in this District.
 28 While that is true that does not rebut the Government's contention. This factor weighs

1 against release.

2 **3. Defendant's History and Characteristics**

3 The government argues Defendant's character, community ties, and past conduct
4 weigh against release because she has never been employed due to disability, reports
5 alcohol and unlawful narcotics use through most of her life, and her criminal history spans
6 most of her adult life. Doc. 25 at 4. Specifically, the government contends Defendant's
7 character and past conduct are "[o]f particular concern," as she has four prior convictions
8 for alien smuggling-related offenses between 2013 and 2021, and she would have still been
9 on supervised release for the 2021 offense had she not violated the terms of her supervised
10 release and been sentenced to serve time with no supervised release to follow. *Id.* The
11 government emphasizes that in three of her four alien smuggling cases, Defendant's
12 supervised release was revoked—sometimes more than once, Defendant has numerous
13 failure-to-appear charges, and Defendant has been offered substance use treatment in the
14 past and was not interested. *Id.*

15 In response, Defendant argues she has no passport, is disabled, has verified family
16 ties to the local community, and is a lifelong Arizona resident. Doc. 26 at 8. Defendant
17 asserts her "well-documented disability, mental health diagnoses and substance abuse
18 history, rather than posing a risk of nonappearance, make [her] significantly less capable
19 of flight." *Id.* at 9. Therefore, according to Defendant, her history and characteristics
20 warrant release on her own recognizance "to allow her to attend substance abuse
21 treatment." *Id.*

22 Defendant, age 39, is a lifelong Arizona resident with no passport. Doc. 14 at 2.
23 Pretrial Services has verified her community ties, which consist of two half-sisters in
24 Tucson, with whom she has only "sporadic" communication. *Id.* She is unemployed due to
25 disability and has no other family in the community identified in the report, though her
26 aunt owns the property on the Tohono O'odham Reservation in which Defendant has been
27 living since her most recent 11-month incarceration. *Id.* Defendant reports no assets,
28 income, or expenses, as she is financially assisted by her aunt. *Id.* Defendant takes daily

1 insulin shots to treat her diabetes and has a heart condition for which she takes no
2 medication. *Id.* Defendant's alcohol and drug use began when she was a teenager and she
3 told Pretrial Services she attended counseling for substance abuse about ten years ago and
4 is interested in treatment. *Id.* at 3. Defendant's aunt verified in an August 2021 Pretrial
5 Services report that Defendant was drinking alcohol daily, but was unsure of the amount,
6 and she believed Defendant was having problems with drugs, but was not sure what drugs
7 she was using specifically. *Id.* Defendant reports no suicidal thoughts, but reports she
8 attempted suicide at age 13 due to grief she was experiencing after the death of her parents.
9 *Id.* at 2.

10 Defendant's criminal history dates to age 18 and includes a variety of offenses
11 stemming from 19 arrests, with multiple failures to appear. Doc. 14 at 3–7. Notably,
12 Defendant failed to appear in at least three cases, was charged with alien smuggling-related
13 offenses in four previous cases, and Defendant's supervised release was revoked in her two
14 most recent alien smuggling cases. *Id.* Specifically, Defendant failed to appear and her
15 supervised release was revoked four times in her 2018 case, in which she also admitted to
16 failing to attend or reschedule her intake appointment for treatment and failed to report to
17 her residential re-entry center. *Id.* at 6–7. Defendant's history and characteristics, therefore,
18 weigh against release.

19 **4. Dangerous Nature**

20 Although the government asserts driving on the highway with a person in the trunk
21 put that person in danger, it does not contend Defendant's release would pose a danger to
22 any person or the community. Doc. 25 at 5. Defendant argues this factor weighs in favor
23 of release because the government "has failed to identify anything in the Defendant's
24 criminal history to suggest that her release would pose[] any kind of danger to others or the
25 community." Doc. 26 at 9. The Court finds that Defendant's criminal history, especially
26 her history of alien smuggling arrests and convictions, suggests that if she is released there
27 is a reasonable possibility that she will reoffend while on pretrial release. This does present
28 a danger to the community in a general sense. On balance, the Court finds that this factor

1 does not favor either party.

2 **B. Conditions of Release**

3 A person facing trial is entitled to release under the least restrictive conditions that
4 will reasonably assure the appearance of the person and should only be denied in rare
5 circumstances. *Motamedi*, 767 F.2d at 1405. Even in the presence of risk, a defendant must
6 still be released if there are conditions of release that may be imposed to mitigate the flight
7 risk or risk to the community. *See* 18 U.S.C. § 3142(e). Any doubts about the propriety of
8 release should be resolved in the defendant's favor. *Motamedi*, 767 F.2d at 1405.

9 Defendant has repeatedly failed to comply with the conditions of her supervised
10 release in her previous two alien smuggling cases in federal court, so the Court doubts she
11 would comply with any conditions different from those imposed in the other cases.
12 Although Defendant has been deemed suitable for a residential substance use treatment
13 program, she repeatedly failed to report for residential programs in the past and instead
14 absconded, in violation of her supervised release. Therefore, the Court finds no conditions
15 could reasonably assure her appearance.

16 **IV. Order**

17 **IT IS ORDERED** the government's Motion for Review of Magistrate Judge's
18 Release Order (Doc. 25) is **GRANTED** and the release order (Doc. 19) is reversed.

19 **IT IS FURTHER ORDERED** Defendant shall remain detained.

20 Dated this 22nd day of June, 2023.

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23 
24 Honorable John C. Hinderaker
25 United States District Judge
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cc: U.S. Marshals